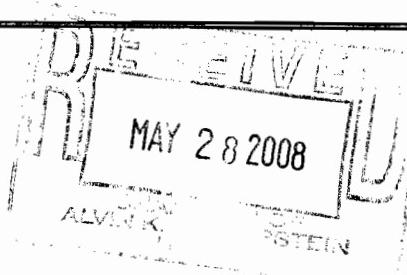




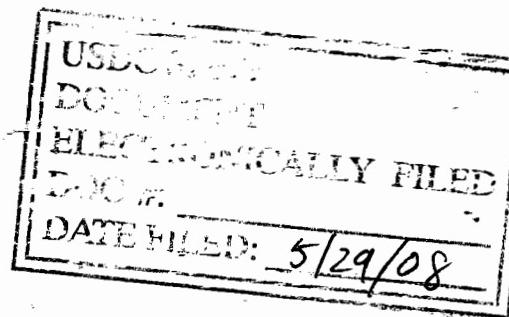
CRAIG STUART LANZA
225 BROADWAY SUITE 2700
NEW YORK, NY 10007
PHONE: +1.212.374.5404
CELL: +1.917.573.4273
FAX: +1.646.304.1725
CLANZA@BALESTRIERE.NET
WWW.BALESTRIERE.NET



May 22, 2008

SENT VIA FACSIMILE (212-805-7942)

Honorable Alvin K. Hellerstein
United States District Court
Southern District of New York
500 Pearl Street, Room 1050
New York, NY 10007



Re: Adjournment in *Fracasso v. The City of New York*, No. 07 CV 4649
(AKH)

Your Honor:

I am writing to request an adjournment regarding the scheduled May 23, 2008, Court Conference.

Plaintiff's position:

Both parties met with your Honor on May 2, 2008 for a conference. At that time, Your Honor was concerned with the prospects of settlement. Your Honor suggested that counsel for both parties appear before Your Honor tomorrow, May 23, 2008.

Since our last meeting with Your Honor, I have had substantive discussions with my client regarding settlement; however, it appears we are still unable to resolve the matter. That said, my clients have not yet been deposed and I feel that their depositions might lead to one of the parties moving on the issue of settlement demands.

Since our last adjournment, Defendant's counsel has made efforts at setting up depositions. Because of a miscommunication and a scheduling error on the Plaintiffs' part, those depositions did not take place. I take full responsibility for this fact and apologize both to the Court and my adversary. In light of this fact, we are requesting a small adjournment of approximately three weeks in order to have the depositions take place and to discuss settlement.



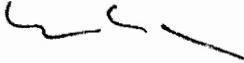
Defendants' Position:

Defendants have been attempting to schedule these depositions for some time. Most recently, on May 2, 2008, depositions of Spitzer and Fracasso were scheduled for May 9 and May 12, respectively. On May 8, at Plaintiffs' counsel's request, Spitzer's deposition was adjourned to May 14. Fracasso then failed to show for her May 12 deposition (Plaintiffs' counsel agreed to pay the court reporter's fee for that busted appearance). On May 13, Plaintiffs' counsel, requested an adjournment of Spitzer's May 14 deposition, and promised that both of his clients would be produced for depositions before May 23 when were supposed to report back to Your Honor regarding the status of the remaining discovery and settlement. We consented to the adjournment when plaintiffs' counsel agreed to produce Fracasso and Spitzer for depositions on May 21 and 22 respectively. On May 20, Plaintiffs' counsel informed us that Fracasso and Spitzer were not available for depositions on May 21 and May 22. Defendants' counsel was ready to proceed with plaintiffs' depositions on the various scheduled dates.

Defendants respectfully request an extension of the discovery end-date to June 30, 2008, to permit them to complete the depositions of Plaintiffs and any discovery arising out of these depositions. Further, in view of the repeated adjournments of these depositions, defendants respectfully request an order directing plaintiffs Fracasso and Spitzer to appear for depositions at 10:00 A.M. on dates certain before June 30, 2008, and if they fail to appear as ordered that they be precluded from testifying at trial or any other proceeding in this action.

I thank the Court for its time and consideration of this letter.

Sincerely,


Craig Stuart Lanza

The court takes a dim view of the parties' last minute cancellation of the conference with the court that was scheduled for May 23.

1. Defendant shall promptly designate dates, within the next two weeks, for taking and completing the depositions of Spitzer & Fracasso. Plaintiff if the dates are not convenient for the witnesses, can ask for alternate dates the same week, but the depositions will be on June 27, 2008, 9³⁰ a.m.
 2. The next conf. with the court on June 27, 2008, we will then see what ever add'l discovery a party needs will then be scheduled, and whatever specifically identified discoveries will then close.
- 5-29-08
